

IN THE MATTER OF	:	BEFORE THE
<b>OAKDALE FARMS, LLC</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 14-017C

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**DECISION AND ORDER**

On August 14, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Oakdale Farms, LLC (Petitioner) for a Farm Winery, Class 2 Conditional Use in an RC-DEO (Resource Conservation: Density Exchange Option) zoning district pursuant to § 131.0.N.58 of the Howard County Zoning Regulations.

Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Joan Becker, Esq., represented the Petitioner. Theodore Mariani, Stephanie Tuite, Regis Dvorsky and Guy Moore testified in support of the petition. Joseph Rutter and Scott Schum also testified, but not in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1A-C. photographic views of the property and sight distance along Ed Warfield Road

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the southeast side of Ed Warfield Road about 1,000 feet southwest of Florence Road in the 4<sup>th</sup> Election District. The subject

property is identified as Tax Map 13, Grid 23, Parcels 277 and 317 (Lot 2) and is known as 16449 Ed Warfield Road (the Property).

Property Description. The Property is 180.88 acres in area and consists of two parcels. Parcel 277 is 175.03 acres and is subject to a Howard County Agricultural Land Preservation Easement. Parcel 277 is improved with a historic residential building, Oakdale, listed as HO-2 in the Howard County Historic Sites Inventory (the principal residence). Parcel 317, Lot 2 is 5.847 acres and unimproved. Improvements are concentrated in the northwesterly, portion of the Property fronting on Ed Warfield Road, which is the reference point for this description of the Property. Some 275 feet from this road and to the southeast is a 2,000sf tenant house. Beyond this tenant house is a 9,000sq building (the proposed Wine Tasting/Sales structure) and to immediate east of the Wine Tasting/Sales structure, an in-ground pool. A covered structure over what appears to be a parking area connects the Wine Tasting/Sales structure and the principal, historic residence (9600sf), which sits 950 feet from the Ed Warfield right-of-way (ROW). The front façade and entrance of the principal residence faces away from Ed Warfield Road and overlooks the bulk of the Property.

To the west of this complex is a second, 1,400sf tenant house and a 120sf smoke house. To the southwest of the complex are an 800sf equipment shed, a 1,500sf barn and a 5,000sf barn proposed to be used for wine production (the Wine Production barn). To the west of the barns are a pond fed by a stream, which is centrally located within a private, 5.109-acre forest conservation easement (Record Plat 22005). The stream is subject to a 100-foot stream buffer. On the western side of the stream buffer, the land has a steep upslope and the area is surrounded by multiple stands of wood. This area is the site of the proposed Orchard and Vineyard. The stream-fed pond will irrigate the Orchard and Vineyard.

The Property is currently accessed via a driveway with a stone wall/gated entrance located

about 330 feet from the western property line. This driveway will not be used for the Farm Winery use due to limited sight distance. The driveway runs south, loops in front of the northernmost tenant house, and then continues south to a small parking area on the south side of the southernmost tenant house and a circle in front of the principal residence. From here, the driveway runs southwest to the barns/shed area, and then continues east as a gravel drive to the farm fields. About 70 acres of the farm are utilized for crop production, including copra, soybeans, wheat and hay. The Property also has frontage on Jennings Chapel Road and two frontage points on Ed Warfield Road, but this frontage is not ordinarily used to access the Property. The developed area is generally level, with steeply sloped areas in the Property's western area. From a high point in the Property's western central area, the land drops in elevation to the stream. The Property's perimeters are wooded to some degree and there are thickly wooded buffers along the southwest rear perimeter and the eastern side of the Property. There are large evergreen trees adjacent to Ed Warfield Road near the proposed parking area and along a portion of the eastern lot line.

2. Vicinal Properties. All adjacent parcels are also zoned RC-DEO. The 3-10 acre eastern and western properties are improved with single-family detached dwellings and outbuildings. The properties to the east, west and south (rear) of the Property are well separated from the developed portion of the Property by distance and wooded buffers. The properties across Ed Warfield Road are improved with single-family detached dwellings and outbuildings.

Parcels 193, 176 and 317, Lot 1 have frontage on Ed Warfield Road and adjoin the Property in the area of the proposed Conditional Use. The proposed driveway (See Proposed Conditional Use Findings) would lie about 150 feet from the Parcel 317, Lot 1 residence. On the Property's west side, the Parcel 193 residence is separated from the proposed Conditional Use area by distance and wooded

buffers. The Parcel 176 dwelling sits about 200 feet to the Property line closest to the pond, beyond which is the proposed Orchard and Vineyard. The Conditional Use Plan (CUP) does not reference Parcel 148, which is identified on the Technical Staff Report (TSR) property map. The Hearing Examiner presumes the structure on Parcel 148 is a residence, which lies about 25 feet from the Property line to the west of the proposed Orchard and Vineyard.

3. Roads. Ed Warfield Road has about 19 feet of paving within a future 50-foot ROW. According to Department of Public Works data, traffic volume on Ed Warfield Road west of Daisy Road was 1,1443 average daily trips as of January 2000. The posted speed limit is 30 MPH. Accord to the Sight Distance Plan submitted with the CUP, the sight distance from the proposed driveway entrance will be about 200 feet to the east and 290 feet to the west.

4. Water and Sewer. The proposed development will be served by private well and septic. See also the Health Department's comments in the Agency Comments Findings.

5. The General Plan. PlanHOWARD 2030 designates the Property as "Rural West" on the Designated Pace Types Map. The Plan's Functional Road Classification Map depicts Ed Warfield Road near the Property as a local road. The Plans Scenic Road map designates Ed Warfield Road as a scenic Road.

6. Comments.

Health Department, Bureau of Environmental Health. The Health Department has no objections to the proposed winery and offers the following comments. The on-site sewerage disposal system and future repair area will need to be evaluated for the change of use and will likely be require the installation of a system utilizing the best available technology (BAT) for removal of nitrogen. If wine process wastewater is proposed to be combined with domestic wastewater or planned for a dedicated on-site system, a Groundwater Discharge Permit from the Maryland Department of the Environment may be required. A review by the Health Department's Food Protection Program may be required if the proposal includes the sale of food or food preparation for consumption. The tent and other areas are required to comply with the Howard County Noise Ordinance.

DPZ, Howard County Agricultural Land Preservation Program (ALPP). Petitioner is advised to contact the Howard County Soil Conservation Plan to update the Soil Conservation and Water Quality Plan to accommodate the new use. An Updated Plan will ensure that the winery does not interfere with any of the best management practices recommended for the farm.

Department of Inspections, Licenses and Permits (DILP). The Petitioner shall be advised that a "Change in Use" Permit will be required to use the existing structure for wine tasting and sales. An accessible route through the pool area may be hazardous to individuals with visual impairments.

Department of Fire and Rescue Services. All temporary structures must meet any state and local fire codes and may be erected for a maximum of 180 days.

Office of Transportation. To mitigate the impact of special events with up to 500 people working and attending, petitioner should inform the various cycling groups operating in the county of the time and dates of special events. Install "share the road" signage along the property frontage to inform both cyclists and motorists of the rules on sharing the lanes on public roads.

7. The Conditional Use Proposal. Pursuant to § 131.0.N.58, Petitioner is seeking conditional use approval for a Farm Winery, Class 2 Conditional Use.

The Proposed Vineyard. Approximately eight acres identified on the CUP as the proposed Orchard and Vineyard would be used for the growing and harvesting of grapes and/or fruit for wine production. This area, described more fully above, would be located about 800 feet west of the principal residence and beyond the stream. Planting in this area of at least two acres will be initiated upon petition approval and will be established within two years of approval.

Production and Bottling. All production and bottling will take place indoors within the existing barn designated on the CUP as the Existing Structure for Wine Production. All materials will be stored within this building. The only equipment to be utilized will be on-site farm equipment for the transportation of materials to and from on-site facilities.

Wine Tasting and Sales. Wine tasting and sales will be conducted indoors, within the 9,000sq building depicted on the CUP as the proposed Wine Tasting/Sales structure. This structure comprises a large gathering room and multiple bathrooms, including ADA facilities.

Outdoor Event Areas. For larger events, the pool area next to this structure will be used for larger events, weather permitting. The CUP also depicts a 19,800sf tent pavilion area to the east of the pool area for special events.

Winery Events and Hours of Operation.

a. **Everyday Events.** The facility will be limited to a daily maximum of 50 persons on site at any time. Activities will include wine tasting, wine sales, tours, educational programs, meetings and social events. The proposed hours of operation are 10:00 a.m. to 10:00 p.m. daily.

b. **Special Events.** A maximum of 15 Special Events, such as weddings, retreats and/or reunions, may be held on the Property for no more than 500 attendees. Any music played during these events will end by 9:00 p.m. The proposed hours of operation are 10:00 a.m. to 10:00 p.m. daily.

**Access, Parking and Pedestrian Pathways.** A new driveway entrance is proposed to be located about 55 feet from the easterly Property line adjoining Parcel 317, Lot 1. A stone entry feature and gate will be located on each side of the new driveway. This driveway would lead to 181 proposed parking spaces in two areas. The main parking area will have 91 spaces and will lie about 75 feet from the future Ed Warfield ROW and about 150 feet from the easterly property line. Existing and proposed evergreen trees will buffer the area adjacent to Ed Warfield between the parking and future ROW. A 90-space overflow area is proposed to the south of the main parking area and about 150 feet from the easterly property line. A partial row of large evergreen trees runs along the east property line and additional screening is proposed. The new driveway and parking areas will be asphalt to reduce dust and noise. Pedestrian pathways would run between the parking and pool area. Because the grade drops slightly between the proposed parking and pool areas, steps and handicap ramps are proposed.

**Employees.** Winery employees include Petitioner's family members and an average of 3-5 employees. This number may increase during harvest season. Caterers may provide additional staff during Special Events.

**Lighting.** Other than pathway and pool area lighting, no new outdoor lighting is proposed.

8. Theodore Mariani testified to being the property owner and petitioner. He is currently in the process of having the historic residence listed on the National Register of Historic Properties. The land is subject to a Howard County agricultural preservation easement, which is subject to a soil management plan. The property is currently farmed and this area will not be reduced for the proposed Conditional use. He also operates his architectural firm at the Property, but this practice is winding down. He and his wife have maintained the Property studiously for the last 33 years, often at great expense and they are turning over the Property to their children and are seeking a means of supporting and maintaining the historic property and agricultural preservation land.

9. Concerning the proposed winery, Mr. Mariani explained that a tent would be used only for large events generally held between May and October. Special Events would include conferences,

weddings, bar mitzvahs and reunions with up to 500 people. The public space in the 9,000sq Wine Tasting/Sales structure can accommodate about 100 persons. The structure has two large meeting rooms, one of which is glass enclosed and the other, walnut-paneled. The structure also has a small patio area, which may be used when weather permits. There would be no Special Event music concerts, but amplified music may be associated with a specific event. Any such music would be controlled and would cease at 9:00 p.m. He would like to replicate the old Oakdale gates with signage at the new entrance. The old driveway would be strictly limited to the residential use.

10. Discussing the Department of Transportation's comments, Mr. Mariani testified that he would post "share the road" signs, but is concerned about posting public notice of Special Events, which are private events that might attract unwanted attention. He would prefer to contact cycling groups directly. Concerning DILP's comments about the proposed accessible route through the pool area being a potential hazard for individuals with visual impairments, Mr. Mariani stated he could provide an alternate access that skirts the pool and leads directly to the tasting area.

11. Mr. Mariani also testified to an existing, but rarely used access to Jennings Chapel Road. It provides access for farm equipment. Tree buffers along property lines would screen the use.

12. Joseph Rutter cross-examined Mr. Mariani in reference to discrepancies between what was presented at the pre-submission meeting and the Conditional Use petition, stating that very little testimony about the intensity of the use was offered.<sup>1</sup> When asked if Mr. Mariani testified at the pre-submission hearing that the proposed use would be similar to the Black Ankle Winery, Mr. Mariani replied that it would. Black Ankle has a wine tasting facility and Oakdale would like to have a similar use.

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<sup>1</sup> Per Subdivision Regulations §§ 16.128(f) and (g), developers must certify to having sent comprehensive minutes of pre-submission community meetings, including a written response to all questions not verbally answered at the meeting to all meeting attendees within 60 days of the meeting either electronically or by first class mail and must also transmit such information, including attendee email/contact information, to the Department of Planning and Zoning when initial plans are filed. Such information is part of the official record.

When asked if he would wait until the vineyard was producing produce to start the bottling operation, Mr. Mariani testified that he had not yet made that decision. When asked if he would object to having some percentage of the bottling operation tied to grapes grown on site, Mr. Mariani responded that he had not yet made that decision. Concerning the County's nomination of Oakdale to the NRHP, Mr. Rutter asked Mr. Mariani if either the county historic commission or the state historic trust had commented on the conditional use application, he replied that they had not, as the Hearing Examiner understood his response.

13. Stephanie Tuite testified to being the engineer and landscape architect for the Conditional Use petition and plan. The proposed access would be situated about 900 feet from the intersection of Daisy Road and Ed Warfield Road. The original entrance would be abandoned. The proposed access is one of many, but the only one with adequate sight distance. In this area, Ed Warfield Road is a Local Road, which becomes a Major Collector beyond the Property. A speed study was commissioned and the study shows adequate sight distance for the posted 30 MPH speed limit.

14. Ms. Tuite testified that all Winery structures are at least 75 feet from all property rights-of way and over 150 from all lot lines. The closest Winery use is the main parking lot, which would be 150 feet from the property line to the northeast. The overflow lot is 75 feet from the future Ed Warfield Road ROW. All main access driveway points would be asphalt and the main parking lot would be gravel. The access aisle to the overflow lot would be gravel and the parking area will be sod. Existing and proposed evergreen trees will buffer the parking lot uses. A total of 181 parking spaces are proposed. Because the Zoning Regulations do not specify parking space requirements for wineries, the minimum number of parking space was based on assembly use requirements (three persons per car) and the most intense winery use, the 500-person Special Event use.



15. Discussing the photographic exhibits comprising Petitioner Exhibit 1A-C, Ms. Tuite explained Exhibit 1A (top) depicts the view toward Ed Warfield from the proposed parking area and shows existing foliage and a white fence, which is to remain. Exhibit 1A (bottom) depicts the line of existing trees to remain at the edge of the access to the main parking area. Exhibit 1B (top) depicts the line of mature deciduous trees to remain between the main parking and overflow parking areas. Exhibit 1B (bottom) depicts the line of existing trees to remain along the eastern property line with Parcel 317, Lot 1. Exhibit 1C (top) depicts the required 252-foot sight distance looking west (left) along Ed Warfield Road in the area of the proposed access, and Exhibit 1C (bottom), the required 200-foot sight distance looking east (right). These photographs indicate the actual sight distance exceeds the minimum requirement. Additional landscaping will be added along the common lot line with Parcel 317, Lot 1, between the proposed driveway to the main parking area and the property line.

16. Ms. Tuite further testified to the existing and reserve septic field being located several hundred feet to the southeast of the main residence with room for expansion. The existing well is just north of the pond.

17. Regis Dvorsky testified to being an adjoining property owner. A portion of his Jennings Road property lies to the south of the Wine Production Barn, which is buffered by distance and trees. He supports the proposed Conditional Use and has no concerns about the use.

18. Guy Moore testified to being a family member and one of the owners of Lariland Farm, which has had to diversify its business plan by adding new activities to ensure the economic stability of the farm. He supports the proposed Conditional Use.

19. Joseph Rutter testified to residing on Jennings Chapel Road to the south of the Property. He is not opposed to the winery, but rather has concerns about the Special Events components. He

noted the pre-submission community meeting minutes reference production of about 1,000 cases of wine per year based on two-three acres of vineyards, which is either a mistake (meaning 1,000 bottles based on industry standards) or an indication of a more intense use than represented in the petition.

20. Mr. Rutter is generally concerned about the size and nature of the proposed operation. With respect to the proposed Special Events, Mr. Rutter questioned whether the County Council envisioned the types of events proposed as part of a farm winery operation in light of controlling state alcoholic beverage laws and Zoning Regulations (ZR) § 131.0.N.58. Pursuant to ZR § 131.0.N.58.I, a farm winery may produce, serve and sell food to complement wine tasting in accordance with Article 2B of Maryland State Code. In his view, the types of Special Events with up to 500 persons proposed in the petition would be unlikely to limit food service, including catering, to such foods that complement wine tasting. For this reason, Mr. Rutter believes the proposed operation, as it concerns Special Events, is more consistent with a different Conditional Use, Limited Outdoor Social Events (§ 131.0.N.33), which imposes a 150-person attendee cap.

21. Mr. Rutter offered the following examples of "Special Events" at other Maryland wineries in support of his understanding that the nature, size and scale of such events is subject to the limiting condition that any food served at such event must complement wine tasting:

- Loews Vineyard in Frederick County offers complementary wine tasting on Father's Day along with "small cheese plates"
- Boordy Vineyards in Baltimore County (one of the largest operations in Maryland) holds summer evening concerts from 6:30 to 9:30 pm, at which Boordy wines, sandwiches and locally produced ice cream are served
- Boordy Vineyards holds a summer farmers market, where locally produced organic products are sold
- Black Ankle in Frederick County (the closest in acreage to the proposed Oakdale winery) offers wine tasting events for its Wine Club members, at which cheese and other complementary food is offered. The winery sells cheese/meat plates and chocolates can be purchased

22. Mr. Rutter also requested the Hearing Examiner to impose several conditions on the

petition if she determines "Special Events" include weddings, retreats and reunions.

- Consider restricting Special Events until Petitioner provides information to DPZ that 50 percent of the grapes used in bottling operation is grown on site.
- Condition approval on the subsequent approval of the SDP, which should address all stormwater management issues and all permits with inspection and approval by county agencies approved by DPZ prior to any use of the property by visitors, including the installation of any required BAT on-site sewerage disposal system
- Restricting the number of Special Event attendees to no more than 150 persons in order to prevent unsafe driving conditions on the area's local and scenic roads
- Restrict Special Events to those related to winemaking and winetasting only

23. Mr. Rutter took exception to the Technical Staff Report (TSR), which in his opinion does a poor job of describing area roads and summarily concludes that access to a collector road is not feasible, with no evaluation of alternatives, considering the record fails to demonstrate why the access could not be to the collector portion of Ed Warfield Road.

24. Scott Schum testified to residing on Tinker Hill Road, off Jennings Chapel Road, where the Property has access to Jennings Chapel Road. Mr. Mariani explained that the proposed winery operation would not use this access.

25. The Hearing Examiner questioned Ms. Tuite about the feasibility of using the access to the collector portion of Ed Warfield Road, based on the CUP depiction of an existing gravel drive running along the easterly lot lines of Lots 2 and 3 of Parcel 127 provide access. Ms. Tuite replied that she had investigated this access, which would have required substantial changes to the road profile and ROW cuts to provide even limited access. It was also unacceptable because the reconfigured access would alter this portion of the scenic road.

26. The Hearing Examiner questioned Mr. Mariani about whether the parking areas could accommodate tour bus parking, because wineries often host group visits and are occasionally used on wine trail tours, the concern being the availability of on-site parking so that tour buses would not park

along Ed Warfield Road or at an area commercial or religious facility parking lot during the actual tour. In response, Mr. Mariani testified that he believed the proposed parking lot could accommodate a tour bus.

### **CONCLUSIONS OF LAW**

As a rule, the Hearing Examiner first evaluates a conditional use petition for compliance with the general Section 131.0. B criteria for approving a conditional use, then for compliance for the specific criteria of the specific Section 131.0.N.13 conditional use category, integrating the resolution of legal issues with these evaluations. In some cases, the Hearing Examiner has reversed this order when clarity necessitates it. In this same interest of clarity, these Conclusions of Law take a third tack, resolving certain background legal issues first.

#### **I. Background Legal Issues<sup>2</sup>**

The testimony in this case raises two issues of statutory interpretation: 1) what is a “Special Event” and 2) when does a Farm Winery begin operating? The resolution of these issues determines what types of activities are permitted at a Special Event and when a Farm Winery, Class 2 may begin holding these events.

##### **A. What is a Special Event?**

ZR § 103.0.A defines a Farm Winery-Class 2 as “[a] Farm Winery which operates on at least 25 acres for the purposes of wine tasting, wine sales, tours, educational programs, meetings, social events and special events.” ZR § 130.0.N.58 authorizes a Farm Winery-Class 2 as a conditional use. ZR § 130.0.N.58.j defines two categories of attendee events.

1) An Everyday Event is one that may occur each day of operation within a calendar year, or as may be further limited by the Hearing Authority, and the number of attendees at any single time shall be as

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<sup>2</sup> The Oakdale, LLC petition is the first Farm Winery, Class 2 Conditional Use Petition heard by the Hearing Examiner since the 2011 passage of the amendment to the Zoning Regulations.

specified by the Hearing Authority, but only up to a maximum of 50 persons at any given time. The most common type of activity in an everyday event is that of customers visiting a tasting room at the Farm Winery to sample or purchase the products produced therein, but may include other low-intensity activities such as individual or small group tours, educational programs, meetings, and social events; and

(2) A Special Event is an indoor and/or outdoor event that may be approved by the Hearing Authority for up to fifteen (15) days within a calendar year. The maximum number of attendees at any given time on a 25 acre farm shall be 150 persons, provided, however, that the Hearing Authority may increase this maximum number of attendees in accordance with Section 131.0.58.k if the property qualifies for such an increase. For a Special Event that occurs on more than one calendar day, each calendar day is counted as one event.

The "Everyday Event" category includes regulatory guidance as to what activities are considered Everyday Events: customers visiting a tasting room at the Farm Winery to sample or purchase the products produced therein and low-intensity activities such as individual or small group tours, educational programs, meetings, and social events. The "Special Events" category does not. There being no regulatory guidance, Mr. Rutter argued through his testimony for a definition derived from ZR § 131.0.N.58.l, which authorizes a farm winery to produce, serve and sell food to complement wine tasting in accordance with Article 2B of the Maryland State Code. Md. Ann.<sup>3</sup> Code art. 2B, § 2-205(b)(1) authorizes a "Class 4 limited winery license" as a specific type of Alcoholic Beverage Manufacturer license. Pursuant to §2-205(b)(5)(iii), *"Subject to paragraph (6) of this subsection"* these licensees may sell or serve only the following: "1. Bread and other baked goods; 2. Chili; 3. Chocolate; 4. Crackers; 5. Cured meat; 6. Fruits (whole and cut); 7. Salads and vegetables (whole and cut); 8. Hard and soft cheese (whole and cut); 9. The following items made with Maryland wine: A. Ice cream; B. Jelly; C. Jam; and D. Vinegar; 10. Pizza; 11. Prepackaged sandwiches and other prepackaged foods ready to be eaten; 12. Soup; and 13. Condiments" (emphasis added.) Perforce of this food service restriction, which is intended to support the winery licensee business, Mr. Rutter claims the types of Special Events proposed by

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<sup>3</sup> State alcoholic beverage laws are commonly known as state "liquor laws" and generally referred to as "2B" law in reference to the Code of Maryland article.

Oakdale—weddings, retreats and/or reunions for up to 500 attendees—are necessarily too intense; i.e., they typically involve a catering service unlikely to limit its food service to food that complements wine tasting.

The § 2-205(5)(b)(2) food service limitation on a farm winery licensee, however, is prefaced by qualifying exemption language, *“Subject to paragraph (6) of this subsection.”* Section 2-205(b)(6)(i) provides that “[a] caterer is not limited to selling or serving only the foods specified in paragraph (5)(iii) of this subsection.” Based on this exemption, the Hearing Examiner concludes the food service limitation in ZR § 131.0.N.58.I does not restrict the types of activities permitted at a Special Event, which if catered, is not limited to serving the foods specified in paragraph (5)(iii). Section § 131.0.N.58.I simply incorporates as regulatory language controlling state law.

This reading is consonant with the legislative history of ZRA 130 (CB-2011), the Zoning Regulations amendment adding “Farm Winery” as an accessory or conditional use.<sup>4</sup> At the March 21, 2011 public hearing, Brenda Steward spoke in opposition to the bill, particularly the “add-on” Special Event privilege, which she opined could include social parties, weddings, corporate parties, rock bands, and three-day events on weekends involving party and caterer trucks. Councilperson Mary Kay Sigaty explained Special Events were needed to make agriculture profitable and asked Ms. Stewart if she was aware of any wineries without special events, commenting further that agriculture is a business and later in the hearing, that Special Events would be part of a winery business plan.

Based on this legislative history and the farm winery zoning regulations as enacted, the Hearing Examiner concludes the County Council did not intend to limit the types of activities permitted as Special Events. For this reason, the Hearing Examiner declines to define or otherwise limit the potential

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<sup>4</sup> The Hearing Examiner reviewed the video from the legislative sessions, work sessions and public hearings held between March 21 and May 5, 2011 on CB 9-2011 and all available on-line documents available under the legislative search feature of the County Council web site.

activities associated with a "Special Event," excepting the regulatory limitations on the number of such events and the number of attendees.<sup>5</sup> "Special Event" activities proposed in a Farm Winery—Class 2 Conditional Use petition are to be evaluated on a case-by-case basis, as is done here in Parts II and III.

B. When Does the Farm Winery Become Operative Such That Special Events May Be Held?

Implicit in Mr. Rutter's cross-examination of Mr. Mariani and in his direct testimony is the claim that a Special Event is a use accessory to the principal farm winery use. ZR § 103.0.A defines an "Accessory Use or Accessory Structure" as "[a] use or structure which is customarily incidental to the principal use or structure, serving no other use or structure, and which is subordinate in area, intensity and purpose to the principal use or structure." Perforce of this definition, no Special Event accessory use may be held in conjunction with a Farm Winery-Class 2 Conditional Use until the principal use winery becomes operative. To determine the operative status of a Farm Winery—Class 2, we look to the definitions of Farm Winery and the conditional use category regulatory criteria.

ZR § 103.0.A defines a Farm Winery as:

An agricultural processing facility located on a farm with a *vineyard, orchard, hives, or similar area*, which consists of vinification equipment, components and supplies for the processing, production and packaging of wine and similar fermented beverages on the premises. Farm winery activities may include associated crushing, fermenting and refermenting, distilling, blending, bottling, storage, aging, shipping, receiving, and may include accessory facilities for laboratory work, maintenance, and office functions (emphasis added.)

ZR § 103.0.A also defines a Farm Winery-Class 2 as: "A Farm Winery which operates on at least 25 acres for the purposes of wine tasting, wine sales, tours, educational programs, meetings, social events and special events." Also of import are three use standards in the Farm Winery—Class 2 Conditional Use category. ZR § 131.0.N.58.f provides that "[p]lanting of at least two acres of grapes or other fruit on the property shall be initiated upon approval and successfully established within two years of approval."

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<sup>5</sup> Being familiar with many state wineries, the Hearing Examiner informally observes here that the vineyards referenced by Mr. Rutter in his testimony host the very types of special events he argues are barred by state law.

Subsection g. requires in pertinent part that “[t]he Farm Winery shall be consistent with and support the farm and its production...” Subsection n. requires the petitioner/owner of an approved Farm Winery—Class 2 Conditional Use to provide documentation to the Department of Planning and Zoning proving compliance with Section 131.0.N.58.f.

The Hearing Examiner reads the regulatory definition that a Farm Winery agricultural processing facility be located on a farm with a “vineyard, orchard, hives, or similar area,” as a legislative intention that the winery be a facility associated with an on-site vineyard land use.<sup>6</sup> A Farm Winery must be associated with cultivating crops used to make wine and is therefore distinguishable from a commercial winery. To ensure compliance with this intent, the successful Farm Winery-Class 2 Conditional Use petitioner must, upon approval, successfully establish and provide documentation to DPZ of the planting of at least two acres of grapes or other fruit on the property for bottling by the on-site agricultural wine processing facility within two years of the Decision and Order approving the use.

The legislature has spoken clearly on this matter. A principal farm winery use does not become operative until the approved winery establishes the on-site agricultural product for bottling by the on-site facility. Therefore, no Special Event may be held until the “wine crop” is successfully established and documented. Because an Everyday Event is also an accessory use, no such event may likewise be held on the approved Farm Winery Conditional Use site until the on-site wine crop is established and documented. Following this same statutory logic, an approved Farm Winery conditional use operation may not begin bottling wine until the wine crop is successfully established and documented.

Although not controlling, this reading is consistent with Md. Ann. Code art. 2B, § 2-205(b)(10), under which “[a] licensee may not sell or allow to be consumed at the location of the limited winery any

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<sup>6</sup> Md. Ann. Code art. 2B, § 2-205 grants authority to sell wine made only from Maryland agricultural products. It does not require an on-site vineyard because it is not a zoning regulation.



alcoholic beverage other than the wine or pomace brandy produced by the licensee under the authority of this section.” If only licensee-produced wine or pomace brandy may be consumed at a Farm Winery Event, no event may be held until a vineyard is established and wine is bottled from that vineyard.

**II. General Criteria for Conditional Uses (§ 131.0.B)**

Based upon the foregoing Findings of Fact and background issues, the Hearing Examiner concludes as follows:

**1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

The Chapter 4, Agricultural Preservation component of PlanHOWARD 2030 encourages diversification in agriculture through new crops. Winery visitors and Special Events will benefit farmers through direct sales of wine and related products produced from “wine crops.” The proposed use is generally harmonious with the Plan.

**2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

Section 131.0.B.2 is an on-site evaluation of the proposed Conditional Use. The Conditional Use Site will be concentrated near the northwesterly Ed Warfield Road frontage. The eight-acre vineyard and the indoor bottling and production use are low intensity uses. Although the intensity of these uses will increase seasonally, they are located on a small portion of the 180.88-acre Property. Winery events will be held only in the Wine Tasting/Sales structure and pool area, with larger events held in the tent pavilion. These uses and structures also comprise a small portion of the Property. While a Special Event will increase the intensity of use 15 days a year, the size of the Property can easily accommodate the use. A new driveway with adequate sight distance is proposed. The Hearing Examiner concludes the overall intensity and scale of use is appropriate.

**3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:**

Unlike ZR §§ 131.0.B.1 and 2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six, off-site "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, (4) access, (5) impact on environmentally sensitive area; and (6) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an RC district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under ZR §131.0.B.3 to establish the proposed uses will not have adverse effects on vicinal properties beyond those ordinarily associated with a Farm Winery-Class 2 in the RC zoning district.

**a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.**

There is no evidence of any atypical impact from fumes, odors, vibrations or similar hazards. Dust from motor vehicles will be reduced through paving. Other than low-level pathway lighting, no additional lighting is proposed. Any noise generated by music provided during a Special Event will cease by 9:00 p.m.

As to the adverse impacts of noise from the assembly use, Petitioner agreed to end amplified music used during the operation of any assembly event at 9:00 p.m. Importantly, the Conditional Use site is a considerable distance from neighboring residential uses and this distance, as well as existing landscaping will buffer noise associated with Special Event music. While such music will cause an episodic spike in noise levels, the required test is that the impact of noise generated by the proposed use be atypical, of which there is no evidence. Moreover, perforce of the Howard County Noise Ordinance (Howard County Code, Title 8, § 8.900 et seq.), the police and health departments are charged with enforcing its requirements, not the Hearing Authority.

Regarding the potential atypical physical impact of tour buses, the Hearing Examiner concludes their off-site parking would result in an inordinate, differential, off-site adverse impact and is conditioning approval on the requirement that all buses and similar large vehicles be parked in the winery parking areas during tours. This condition also supports the § 131.0.N.58.c standard that a winery's use of a local road for access not unduly conflict with other uses that access the local road.

**b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

No wall or fences are proposed. All structures will meet district zoning setback requirements. The heights of the winery structures (the Wine Production and the Wine Tasting/Sale structures) do not appear to be provided in the petition. For this reason, the Hearing Examiner is conditioning approval on the Petitioner providing proof of compliance with the RC district structure height requirements at the SDP stage and providing this information as a note on the SDP. Existing and proposed landscaping will screen the parking areas. The use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

**c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

No loading or refuse areas are proposed. Up to 50 visitors a day, and up to 500 persons at Special Events are requested, and the winery itself will necessarily produce waste, all of which leads the Hearing Examiner to conclude that a refuse area will likely be necessary. For this reason, as a condition of approval, Petitioner shall denote DPZ-acceptable locations of a screened refuse area and a screened loading area for the Wine Production structure on the SDP. There is no specific parking requirement for the proposed use. Petitioner is instead proposing parking for the use based on place of assembly requirements, which is 10 spaces per 1,000s.f. The two parking areas propose 180 spaces. They will be buffered by existing and proposed landscaping. A new driveway entrance and a stone entry feature and gate are proposed. Existing and proposed evergreen trees will buffer the area adjacent to Ed Warfield between the parking and future ROW. A 90-space overflow area is proposed to the south of the main parking area and about 150 feet from the easterly property line. A partial row of large evergreen trees runs along the east property line and additional screening is proposed.

**d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

The proposed Conditional Use will utilize a new driveway located about 150 feet from the Parcel 317, Lot 1 residence, and which will not be shared with other residential properties. The petition includes a Sight Distance Plan and Profile and an Adequate Road Facilities Test Evaluation. The sight distance from the proposed driveway entrance will be about 200 feet to the east and 290 feet to the west, indicating adequate sight distance for the posted 30 MPH speed limit.

**e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

There are no known, off-site, environmentally sensitive areas in the vicinity. This section is inapplicable.

**f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

There are no known, off-site vicinal historic sites. This section is inapplicable.

### **III. Specific Criteria for Farm Winery-Class 2 Conditional Use (§ 131.0.N.58)**

A Conditional Use may be granted for a Farm Winery- Class 2 in the RC and RR Districts, providing it complies with the following criteria:

**a. The use is located on a parcel of at least 25 acres. The use is permitted on any such parcel, including parcels with Agricultural Land Preservation Easements and preservation parcels.**

The 180.88-acre Property comprises two parcels and the use will be located on the 175.03-acre Parcel 277, which is subject to a Howard County Agricultural Land Preservation Easement, in compliance with § 131.0.N.58.a.

b. The lot or parcel upon which the Farm Winery is located shall have frontage on and direct access to a road classified as an arterial or collector public road. Unless the Hearing Authority approves access to a local road as provided in Section 131.0.N.56.c, the sole access to and from the site shall be from the arterial or collector public road.<sup>7</sup>

See § 131.0.N.58.c.

c. The Hearing Authority may approve access to a local road upon findings that access to an arterial or collector public road right-of-way is not feasible, the local road is not internal to a residential cluster subdivision unless the residential cluster subdivision was originally designed, constructed, and marketed as a winery community organized around a winery parcel, the access to the local road is safe based on road conditions and accident history, and that the use of the local road for access to the winery will not unduly conflict with other uses that access the local road.

The petition does not explain why it is unfeasible to provide access to an arterial or collector public ROW. Nor did Mr. Mariani or Ms. Tuite explain this unfeasibility in their direct testimony. Mr. Rutter observed in his direct testimony that the TSR summarily concluded access to a collector road was not feasible, with no evaluation of alternatives, including the Property's access to the collector portion of Ed Warfield Road.

Clearly, this information should be submitted with a petition seeking local road access. The Hearing Examiner therefore questioned Ms. Tuite as to why it is not feasible for the use to access the collector portion of Ed Warfield Road. It was her testimony that this access had been indeed been studied, but that substantial changes to the road profile would be required to provide adequate sight distance. Having reviewed this testimony, the Hearing Examiner concludes collector access is not feasible because it would require significant and detrimental changes to this portion of a county scenic road. The proposed local road access is not internal to a residential cluster subdivision. The Sight Distance Plan and Profile and Adequate Road Facilities Test Evaluation speed study submitted with the petition indicates adequate sight distance for the posted 30 MPH speed limit at the proposed driveway.

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<sup>7</sup> The reference to Section 131.0.N.56.c is a typographical error. The correct reference is to Section 131.0.N.58.c.

When a farm winery petition proposes access from a local road, the use of the local road must not conflict unduly with other uses accessing that same local road. The TSR notes the popularity of Ed Warfield Road with recreational cyclists. It therefore recommends Petitioner provide the event management information in accordance the Office of Transportation's request that petitioner should inform the various cycling groups operating in the county of the time and dates of special events and install "share the road" signage along the property frontage to inform both cyclists and motorists of the rules on sharing the lanes on public roads. In his testimony on this use standard, Mr. Mariani agreed to post "share the road" signs, and expressed a preference to contact cycling groups directly about Special Events, which are private events that might attract unwanted attention.

In crafting appropriate conditions of approval to ensure conformance with this road use standard, the Hearing Examiner reviewed the "Events" website pages of Maryland farm wineries that host the type of private Special Events proposed at Oakdale, including Black Ankle Farms, Elk Run and Linganore Winecellars. No such private events are posted on their Events pages, but these pages do post a broad variety of public events, including activities falling within the category of "Everyday Events."

Because an approved Conditional Use runs with the land, all future owners of the Property enjoy the legal right to operate a farm winery in compliance with this Decision and Order, including Mr. Mariani's children. Local road access is therefore conditioned upon the objective requirement that all Property owners maintain and update a contact list of any Howard County office or employee and major Howard County cycling groups and contact these groups when a Special Event is held.<sup>8</sup> During such events, the property owner shall post signs at the access informing attendees of the need to share the road. The property owner shall also prepare a one-page notice instructing guests and attendees to

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<sup>8</sup> During the drafting of the Decision and Order, the Hearing Examiner learned the County had created a new position, "pedestrian and bike planning manager." Ideally, this person would coordinate information about large events throughout the county

exercise caution when leaving/arriving at events owing to the popularity of Ed Warfield Road and area roads with cyclists. This notice shall be provided for distribution to guests and attendees by the Special Event host. Additionally, because Everyday Events will likely be held more frequently and during hours when cyclists are typically on the road, any farm winery web page or equivalent thereof shall include on its home page a note to the effect that visitors should exercise caution when leaving/arriving at events owing to the popularity of Ed Warfield Road and area roads with cyclists. Subject to these conditions, the petition complies with § 131.0.N.58.c.

**d. The driveway providing access to the proposed site shall not be shared with other properties; however the Hearing Authority may waive this criteria if the petitioner provides affidavits from all persons who also share the driveway that they do not object to the use of the driveway for the Farm Winery. If the use of a shared driveway is allowed, the petitioner shall demonstrate that the use will not result in damage to or deterioration of the shared driveway or in increased hazards to other users of the driveway. The Hearing Authority shall prescribe appropriate conditions and safeguards to ensure the Farm Winery owner's responsibility for repair of any damage or deterioration of the shared driveway caused by the Conditional Use.**

No shared driveway access is proposed. This section is inapplicable.

**e. All winery related structures and uses excluding cultivation areas shall be at least 75 feet from a public road right-of-way and 150 feet from all other lot lines. The Hearing Authority may reduce the setback of 150 feet from the lot lines, but only to a minimum of 75 feet, if:**

- (1) The adjoining land is committed to an agricultural or environmental preservation easement or a long term institutional or open space use that provides an equivalent or better buffer; or**
- (2) The petition includes detailed plans for screening. The Hearing Authority may require appropriate screening of adjoining parcels, which may include a solid fence, wall, landscaping, or a combination, that presents an attractive and effective buffer.**

All structures are located at least 75 feet from all rights-of-way and over 150 feet from all lot lines. The closest Winery use, the main parking lot, would be located about 150 feet from the property line to the northeast. The overflow lot is 75 feet from the future Ed Warfield Road ROW. The petition complies with § 131.0.N.58.e.

**f. Planting of at least two acres of grapes or other fruit on the property shall be initiated upon approval and successfully established within two years of approval.**



The CUP depicts approximately eight acres as the proposed Orchard and Vineyard. The petition states planting in this area of at least two acres will be initiated upon petition approval and will be established within two years of approval. The petition complies with § 131.0.N.58.f.

**g. The Farm Winery shall be consistent with and support the farm and its production, shall not interfere with the implementation of soil conservation and water quality best management practices, and shall not impact floodplains, wetlands, stream buffers, steep slopes or other environmental features on the Farm Winery property.**

According to the petition, the Property is currently subject to a soil conservation program satisfying this requirement. ALLP advises petitioner to update the plan. Subject to the condition that Petitioner update the Soil Conservation and Water Quality Plan to accommodate the new use, the petition complies with § 131.0.N.58.g.

**h. The Farm Winery shall be compatible with the rural character of the farm and the surrounding area.**

The vineyard and winery structures, including the re-purposing of an existing barn for production and bottling are consistent with the rural character of the farm and surrounding area, in accordance with § 131.0.N.58.h.

**i. Farm Winery visitor hours shall be restricted to between 10:00 a.m. and 10:00 p.m. daily. The Hearing Authority may reduce the hours for visitors, but shall not increase them. The hours for winery processing and production operations are not limited.**

The proposed Farm Winery visitor hours are 10:00 a.m. and 10:00 p.m., in accordance with § 131.0.N.58.h.

**j. The Farm Winery shall be limited to two categories of attendee events; Everyday Events and Special Events, each with specific limitations as follows:**

**(1) An Everyday Event is one that may occur each day of operation within a calendar year, or as may be further limited by the Hearing Authority, and the number of attendees at any single time shall be as specified by the Hearing Authority, but only up to a maximum of 50 persons at any given time. The most common type of activity in an everyday event is that of customers visiting a tasting room at the Farm Winery to sample or purchase the products produced therein, but may include other low-**

intensity activities such as individual or small group tours, educational programs, meetings, and social events; and

**(2) A Special Event is an indoor and/or outdoor event that may be approved by the Hearing Authority for up to fifteen (15) days within a calendar year. The maximum number of attendees at any given time on a 25 acre farm shall be 150 persons, provided, however, that the Hearing Authority may increase this maximum number of attendees in accordance with Section 131.0.58.k if the property qualifies for such an increase. For a Special Event that occurs on more than one calendar day, each calendar day is counted as one event.**

Everyday Events. Petitioner will limit Everyday Events at the facility to a daily maximum of 50 persons on site at any time. Activities will include wine tasting, wine sales, tours, educational programs, meetings and social events. The proposed hours of operation are 10:00 a.m. to 10:00 p.m. daily. The petition accords with § 131.0.N.58.j.(1).

Special Events. A maximum of 15 Special Events, such as weddings, retreats and/or reunions, will be held on the Property for no more than 500 attendees. Any music played during these events will end by 9:00 p.m. The proposed hours of operation are 10:00 a.m. to 10:00 p.m. daily. The evidence of record indicates that all Special Events held will be private, invitation only occasions. No public Special Events, such as those that may be advertised to the public or events requiring tickets, including, but limited to music concerts, farmer's markets or public festivals are proposed. Subject to the condition that all Special Events, which are private gatherings, the petition accords with § 131.0.N.58.j.(2).

**k. The standard maximum number of persons permitted to visit the property at any one time for Special Events shall be 150 attendees. The Hearing Authority may increase the maximum number of Special Event attendees by 5 people for every acre of land area above the minimum 25 acre parcel size, based upon the gross acreage of the parcel, up to a total maximum of 500 attendees.**

**If the Farm Winery is located on a farm which is comprised of more than one parcel under the same ownership (the "Overall Farm"), the Hearing Authority may base this potential attendee increase on the gross acreage of the Overall Farm as long as there is a condition to decrease the number of attendees if for any reason the land area of the Overall Farm is reduced after the initial Conditional Use approval.**

The Property is 180.88 acres in size and 155.88 acres above the 25-acre minimum lot size, which enables Petitioner to increase the maximum attendance to 500 persons, in accordance § 131.0.N.58.k.

**l. A Farm Winery may produce, serve and sell food to complement wine tasting in accordance with Article 2B of the Maryland State Code.**

See above discussion in Part l. Petitioner proposes to produce, serve and sell food to complement wine tasting in accordance with Article 2B of the Maryland State Code, in accordance with § 131.0.N.58.l.

**m. Any accessory retail sales within the Farm Winery, other than the wine and similar fermented beverages produced at the Farm Winery, are limited to items promoting the same Farm Winery, such as glassware, clothing, and wine-related items such as wine openers. A Farm Winery may sell plants and/or produce grown on-site.**

The petition states the Farm Winery will comply with this requirement, in accordance in accordance with § 131.0.N.58.m.

**n. If approved, the owner shall provide documentation to the Department of Planning and Zoning proving compliance with Section 131.0.N.58.f. It is the responsibility of the Farm Winery owner to obtain any other required Federal, State and County approvals required prior to operating the use.**

See Part l above. The petition states the Farm Winery will comply with this requirement, in accordance in accordance with § 131.0.N.58.n.

**ORDER**

Based upon the foregoing, it is this **9<sup>th</sup> day of September 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Oakdale Farms, LLC for a Farm Winery-Class 2 conditional use in an RC-DEO (Resource Conservation: Density Exchange Option) zoning is hereby **GRANTED**.

**Provided, however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use for a Farm Winery—Class 2 as described in the petition and depicted in the April 22, 2014 Conditional Use Plan and not to any new structures or uses on the Site or any additions thereto.
2. The property owner shall provide documentation to the Department of Planning and Zoning proving compliance with Section 131.0.N.58.f. It is the responsibility of the Farm Winery owner to obtain any other required Federal, State and County approvals required prior to operating the use.
3. The Farm Winery shall not begin bottling wine until the wine crop is successfully established and documented.
4. No Special or Everyday Event shall be held on the Property until the wine crop is established and documented.
5. All Special Events shall be private gatherings by invitation only. No Special Event shall be open to the public (no public Special Events).
6. All Special Event music shall end by 9:00 p.m.
7. All tour buses or similar large vehicles transporting visitors, guests or attendees shall be parked in the winery parking areas.
8. All Special Events shall employ a traffic management plan. The property owner is responsible for the plan.
9. The Site Development Plan shall depict an alternate access that skirts the pool and leads directly to the tasting area.
10. Petitioner shall denote the location of screened refuse and loading areas acceptable to DPZ on the site development plan.
11. Petitioner shall provide proof of compliance with the RC district structure height requirements at the

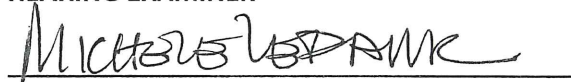
site development stage and provide this information as a note on the SDP.

12. The property owner shall maintain a contact list of all major Howard County cycling groups and shall contact these groups when a Special Event is held. During such events, the property owner shall post signs at the access informing attendees of the need to share the road. The property owner shall also prepare a one-page notice stating guests and attendees should exercise caution when leaving/arriving owing to the popularity of Ed Warfield Road and area roads with cyclists. This notice shall be provided for distribution to guests and attendees by the Special Event host. Any farm winery web page or equivalent thereof shall include on its home page a note to the effect that visitors should exercise caution when leaving/arriving at events owing to the popularity of Ed Warfield Road and area roads with cyclists.

13. Petitioner shall update the Soil Conservation and Water Quality Plan to accommodate the new use.

14. Petitioner shall comply with all county and state laws and regulations.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER

  
Michele L. LeFaivre

Date Mailed: 9/9/14

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.